

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NANCY ROBERTSON,

Plaintiff,

V.

WILLIAMS-SONOMA STORES, INC.
AND WILLIAMS-SONOMA, INC.,

Defendants.

§ CIVIL ACTION NO. 4:11-cv-04299

§

§ VANESSA D. GILMORE

§ Judge

§

§ Esthela Mares

§ Case Manager

§

§

§ _____
§ Court Reporter

§

Civil Trial

Proceeding

**DEFENDANTS' REQUEST TO USE DEMONSTRATIVE EXHIBIT IN
OPENING STATEMENT**

Defendants Williams-Sonoma Stores, Inc. and Williams-Sonoma, Inc. (collectively, "Defendants") hereby respectfully request that the Court approve their use of the demonstrative exhibit attached hereto as Exhibit "A" in their opening statement at trial. Defendants shared this demonstrative exhibit with counsel for Plaintiff Nancy Robertson ("Plaintiff") on February 4, 2013 and inquired as to any objections. Plaintiff objected to its use on the grounds that it "is not objective" and it "reflects factual assertions that ... are ... disputed." Plaintiff's objections lack merit.

First, Plaintiff argues that the demonstrative exhibit is not objective because it contains "lawyer-created labels" such as "lack of follow through." However, this label is not lawyer-created at all. The evidence will show that Plaintiff was counseled multiple times for lack of follow through during her employment. (*See, e.g.*, Exh. 104 (written

warning issued to Plaintiff on January 26, 2011 for “fail[ing] to provide [a] customer with promised follow up”); Exh. 108 (written warning issued to Plaintiff on March 14, 2011 after the store General Manager “received a complaint from a customer about the service and follow through provided by [Plaintiff]”); Exh. 102 (written warning issued to Plaintiff on March 26, 2010 stating that Plaintiff “continues to struggle leading her team to achieve success in specific developmental areas [previously] addressed”); Exh. 101 (written warning issued to Plaintiff on August 10, 2006 for failing to “ensure daily bank deposits were made”). The proposed demonstrative exhibit merely summarizes this evidence. These issues will be mentioned in opening statement as to what Defendants expect to prove at trial.

Second, there is no rule that demonstrative exhibits used in an opening statement only contain undisputed facts. Plaintiff argues that Defendants’ proposed demonstrative exhibit is improper because it refers to a written warning Plaintiff contends she never received. However, two of Defendants’ witnesses – Susan Mancuso, Regional Vice President and Jeff Van Antwerp, District Manager – will testify at trial regarding the written warning, and Mr. Van Antwerp will testify unequivocally that it was, in fact, delivered to Plaintiff. There is more than enough evidentiary support for Defendants to refer to the written warning during their opening statement as to “what the evidence will show.” *See United States v. Dinitz*, 424 U.S. 600, 612 (1976) (Burger, C.J., concurring) (the purpose of the opening statement is to “state what evidence will be presented”).

Based on the foregoing, Defendants respectfully request that the Court issue an order approving Defendants' use of the demonstrative exhibit attached hereto as Exhibit "A" in their opening statement at trial.

Respectfully submitted,

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EXHIBIT A

Performance Documents

Aug 10, 2006
March 26, 2010
Sept 16, 2010
Jan 26, 2011 (x2)
March 14, 2011

Customer/Associate Complaints

Jan 26, 2011
March 14, 2011
Feb 28, 2011
March 2, 2011
October 19, 2010
October 8, 2010

Lack of Follow Through

Jan 26, 2011
March 26, 2010
Oct 1, 2009
Aug 16, 2006

Nancy Robertson

Refusal to Follow
Directions
Sept 16, 2010

PIPs
Jul 27, 2007
Feb, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon the counsel of record listed below by the Southern District of Texas ECF method on the 6th day of February, 2013.

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